



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

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OFFICE OF THE
REGIONAL ADMINISTRATOR

Meika Vogel
Vice President, General Counsel
Diamond Vogel
1110 Albany Place Southeast
Orange City, Iowa 51041

Dear Ms. Vogel:

Your letter of October 28, 2019, to Senator Joni Ernst was forwarded to the office of Assistant Administrator Peter Wright of the U.S. Environmental Protection Agency, who has requested that I respond to you on his behalf. Thank you for communicating Diamond Vogel's concerns with the EPA's role in the remedial process at the Vogel Paint & Wax Co. Site. I appreciate this opportunity to facilitate further dialogue between Diamond Vogel, my staff in the Superfund & Emergency Management Division, Assistant Administrator Wright's staff in the Office of Superfund Remediation & Technology Innovation, and our counterparts at the Iowa Department of Natural Resources.

Protection of human health and the environment through the timely cleanup of contaminated sites is the primary mission of the EPA's Superfund program. Through the ongoing work of the Superfund Task Force, the EPA has recommitted itself to improving and optimizing its implementation of the Superfund program in order to accelerate cleanups and encourage productive reuse of sites. Likewise, Region 7 intends to faithfully advance these principles at the ground-level in our four-state region, including at the Vogel Paint & Wax Co. Site. Considering these priorities, the EPA shares Diamond Vogel's dual interest in protecting human health and the environment and achieving deletion of the Site from the National Priorities List, or NPL, as it does for all cleanup sites.

As noted in your letter to Sen. Ernst, the EPA serves at this Site as support agency to the IDNR. In June 1990, the agencies memorialized this relationship in a site-specific Memorandum of Understanding, or MOU, that outlines the EPA and the IDNR's respective responsibilities for response actions at the Site. Under this MOU, the parties agreed that the Site's potentially responsible party—at that time known as Vogel Paint & Wax Co.—would perform remedial design/remedial action activities, or RD/RA, "in accordance with CERCLA, as amended, the National Contingency Plan (NCP) and all applicable EPA guidance." The MOU provides further that "[t]he parties will work together to identify problems and to recommend solutions respecting the RD/RA including the planning and review of documents, communication with Vogel Paint and Wax and its consultants, and the implementation of the ROD."

With this cooperative partnership in mind, Region 7's programmatic and legal staff considered the parties' December 2018 meeting a unique opportunity to communicate important policy considerations potentially relevant to Diamond Vogel's proposal to implement a bioremediation pilot study at the Site. The EPA was also pleased to learn of Diamond Vogel's commitment to working toward site deletion and, in furtherance of that aim, agreed to coordinate with headquarters personnel and the IDNR to examine policy questions related to site deletion. It was through this process of close interagency



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coordination that the EPA identified the existing groundwater point-of-compliance as a potential barrier to NPL deletion.

Following these discussions, the EPA completed the five-year review process which further evaluated issues that might influence progress toward site deletion. Five-year reviews are not explicitly addressed under the agencies' 1990 MOU, but the NCP requires the performance of these reviews at sites where waste is left in place above a level that would allow for unrestricted use. At enforcement lead sites, "the ultimate responsibility for the quality and completeness of review activities and the content and protectiveness determinations of the Five-Year Review report rests with EPA."¹ At this site, the EPA assumed responsibility for drafting both the Fourth and Fifth Five-Year Reviews and, with that responsibility, the expectation to "work together [with IDNR] throughout the five-year review process to ensure that concerns are resolved in a timely manner, and to the extent practicable, prior to finalizing the Five-Year Review report."

Consistent with this responsibility, Region 7 provided the IDNR an opportunity to comment on the draft Fifth Five-Year Review on two separate occasions. As you are aware, Diamond Vogel also submitted two comment letters to the EPA during the five-year review process. All comments received from the IDNR and Vogel were considered by the EPA prior to finalizing the Five-Year Review Report. I understand and regret your frustration with the EPA's eventual finalization of the Five-Year Review to the extent it was caused by a lack of communication between my staff, the IDNR, and Diamond Vogel. I am hopeful, though, that you appreciate the EPA's good-faith intent, as the support agency, to further discuss its policy positions with the parties as work proceeds at the Site.

To that end, I have requested my staff convene a meeting between Diamond Vogel, the IDNR, and the EPA to engage in a dialogue that will enable progress toward site deletion. To help inform and guide the conversation, the EPA will come prepared to discuss the EPA's policies and processes concerning NPL deletion. This conversation is essential to establishing an understanding among the parties and developing a path toward site deletion. Jared Pessetto, the attorney assigned to this matter, will contact you to schedule the meeting.

Again, thank you for your letter to Sen. Ernst and the opportunity to address Diamond Vogel's concerns with the EPA's involvement at the Vogel Paint & Wax Co. Site. If I can be of any further assistance, please feel free to contact me at (913) 551-7006, or your staff may call LaTonya Sanders, Congressional Liaison, at (913) 551-7555.

Sincerely,

James B. Gulliford

¹ "Comprehensive Five-Year Review Guidance," OSWER Dir. No. 9355.7-03B-P, p. 2-1, 2-3 (July 17, 2001).